

**INSURANCE DIVISION[191]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 505.8 and 521A.8, the Insurance Division hereby adopts amendments to Chapter 45, “Insurance Holding Company Systems,” Iowa Administrative Code.

Chapter 45 establishes standards and procedures for insurance companies that are part of an insurance holding company system. This adopted rule making sets forth procedural requirements which the Insurance Commissioner deems necessary to carry out the provisions of Iowa Code chapter 521A as amended by 2014 Iowa Acts, Senate File 2104. The actions and information required by these amendments are necessary and appropriate to the public interest and protect the solvency of insurers within the insurance holding company system by monitoring transactions between insurers and their affiliates and assessing the “enterprise risk” within the insurance holding company system and determining the impact of such risk upon the solvency of insurers within the insurance group. The amendments add new Form F, which is the newly required annual enterprise risk report that must be filed by an insurer’s ultimate controlling person. The amendments also list specific provisions that must be included in an insurer’s cost-sharing and management service agreements with other members of its holding company system.

These amendments were published under Notice of Intended Action in the December 10, 2014, Iowa Administrative Bulletin as **ARC 1784C**.

Interested persons were able to make written suggestions or comments on the proposed amendments through December 30, 2014. Written and oral comments were received. A public hearing was held on December 30, 2014, at 10 a.m. at the offices of the Iowa Insurance Division, 601 Locust Street, Fourth Floor, Des Moines, Iowa. Kimberlee Cross, Assistant Chief Examiner, acted as the hearing officer.

Testimony at the public hearing was in support of the proposed amendments. One written comment that requested an exemption or delayed effective date for certain insurance companies from filing Form F was received. Upon consideration of all oral and written comments, the Division made one nonsubstantive change to Form B, Item 7, paragraph (c), to correct an internal reference. In addition, two cross references to 2014 Iowa Acts, Senate File 2104, which is now codified, have been changed to Iowa Code cross references, and a typo was corrected in Form D, Item 5, paragraph (f), second sentence, by changing the word “changes” to “charges.”

The Division finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective January 14, 2015. The Division finds that these amendments are critical for providing guidance to insurers to enable consistency in reporting enterprise risk management reports. A public hearing was held, and the amendments to the rules are clarifying in nature and not substantive.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 521A as amended by 2014 Iowa Acts, Senate File 2104.

These amendments became effective January 14, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 191—45.5(521A) as follows:

**191—45.5(521A) Registration of insurers.**

**45.5(1) *Annual registration.*** Any insured required to file an annual registration statement pursuant to Iowa Code section 521A.4 shall furnish all the information required on ~~FORM~~ Form B hereto annexed and hereby made a part of these rules.

**45.5(2) *Amendment to Form B.*** An amendment to Form B shall be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement. Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page “Amendment No. [insert

number] to Form B for [insert year]” and shall indicate the date of the change and not the date of the original filing.

**45.5(3) Summary registration.** An insurer required to file an annual registration statement pursuant to Iowa Code section 521A.4 is also required to furnish information required on ~~FORM~~ Form C, hereby made a part of these ~~regulations~~ rules. An insurer shall file a copy of ~~FORM C~~ Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state. Form C shall include all amendments for the statement period.

ITEM 2. Amend rule 191—45.9(521A) as follows:

**191—45.9(521A) Transactions subject to prior notice—notice filing.**

**45.9(1)** An insurer required to give notice of a proposed transaction pursuant to Iowa Code section 521A.5 shall furnish the required information on ~~FORM~~ Form D, hereby made a part of these ~~regulations~~ rules.

**45.9(2)** Agreements for cost-sharing services and management services shall, at a minimum and as applicable:

- a. Identify the person providing services and the nature of such services;
- b. Set forth the methods to allocate costs;
- c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
- d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
- e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
- f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
- g. Specify that all books and records of the insurer are and shall remain the property of the insurer and are subject to control of the insurer;
- h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer;
- i. Include standards for termination of the agreement with and without cause;
- j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
- k. Specify that if the insurer is placed in receivership or seized by the commissioner under the state receivership Act:
  - (1) All of the rights of the insurer under the agreement extend to the receiver or the commissioner;and
  - (2) All books and records will immediately be made available to the receiver or the commissioner and shall be turned over to the receiver or the commissioner immediately upon the receiver’s or the commissioner’s request;
- l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Iowa Code chapter 507C; and
- m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under Iowa Code chapter 507C, and will make them available to the receiver for so long as the affiliate continues to receive timely payment for services rendered.

ITEM 3. Amend rule 191—45.10(521A) as follows:

**191—45.10(521A) Extraordinary dividends and other distributions.**

**45.10(1)** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- ~~45.10(1)~~ a. The date established for payment of the dividend;

*b.* The amount of the proposed dividend;

~~45.10(2)~~ *c.* A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof of its cost, and its fair market value together with an explanation of the basis for valuation;

~~45.10(3)~~ *d.* The A copy of the calculations used to determine that the proposed dividend is extraordinary, including the amounts and dates of all dividends (including regular dividends) paid within the period of 24 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the second and immediately preceding years;

~~45.10(4)~~ *e.* A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted;

~~45.10(5)~~ *f.* A brief statement as to the effect of the proposed dividend upon the insurer’s surplus and the reasonableness of surplus in relation to the insurer’s outstanding liabilities and the adequacy of surplus relative to the insurer’s financial needs.

~~45.10(6)~~ ~~45.10(2)~~ A dividend or distribution to an insurer’s shareholders which exceeds the greater of (a) 10 percent of the insurer’s surplus as regards policyholders as of the 31st day of December next preceding, or (b) the net gain from operations of such insurer if the insurer is a life insurer, or the net income if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding ~~must~~ shall be submitted to the commissioner 30 days in advance for approval. The commissioner may deem such dividend to be excessive and to constitute grounds under 191—subrule ~~5.23(6)~~ 110.4(5) for finding the insurer to be in a financially hazardous condition and subject to the provisions of 191—subrule ~~5.24(2)~~ 110.5(2).

ITEM 4. Adopt the following new rules 191—45.11(521A) and 191—45.12(521A):

**191—45.11(521A) Enterprise risk report.** The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Iowa Code section 521A.4(12) shall furnish the required information on Form F, hereby made a part of these rules.

**191—45.12(521A) Forms—additional information and exhibits.** In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, and Form F, the commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as the person may desire in addition to those expressly required by the statement. The exhibits shall be marked as to indicate clearly the subject matter to which they refer. Changes to Form A, B, C, D, or F shall include on the top of the cover page the phrase: “Change No. [insert number] to” and shall indicate the date of the change and not the date of the original filing.

ITEM 5. Amend **191—Chapter 45**, Forms A and B, as follows:

FORM A

STATEMENT REGARDING THE  
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

\_\_\_\_\_  
Name of Domestic Insurer  
BY

\_\_\_\_\_  
Name of Acquiring Person (Applicant)

Filed with the Insurance Division of Iowa

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

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FORM A

**Item 1.** No change.

**Item 2. Identity and background of the applicant.**

(a) and (b) No change.

(c) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. ~~No affiliate need be identified if its total assets are equal to less than one half of one percent of the total assets of the ultimate controlling person affiliated with the applicant.~~ Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. ~~As to For~~ For each person specified in such chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

**Item 3. Identity and background of individuals associated with the applicant.**

~~State~~ On the biographical affidavit, include a third-party background check, and state the following with respect to (1) the applicant if an individual or (2) all persons who are directors, executive officers or owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual.

(a) to (d) No change.

**Item 4. to Item 11.** No change.

**Item 12. Financial statements, and exhibits, and three-year financial projections.**

(a) Financial statements, and exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements, and exhibits, and projections so attached.

(b) and (c) No change.

**Item 13. Agreement requirements for enterprise risk management.** Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within 15 days after the end of the month in which the acquisition of control occurs.

**Item 13 14. Signature and certification.** No change.

FORM B

INSURANCE HOLDING COMPANY SYSTEM  
ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Division of Iowa

By

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Name of Registrant

On Behalf of the Following Insurance Companies

Name	Address

Date: \_\_\_\_\_, 20 \_\_\_\_\_

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

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FORM B

**Item 1.** No change.

**Item 2. Organizational chart.**

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. ~~No affiliate need be shown if its total assets are equal to less than one-half of 1 percent of the total assets of the ultimate controlling person within the insurance holding company system.~~ The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. ~~As to~~ For each person specified in such chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

**Item 3. The ultimate controlling person.**

As to the ultimate controlling person in the insurance holding company system furnish ~~the~~ all of the following information:

(a) to (g) No change.

**Item 4. Biographical information.**

~~Furnish~~ If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name, address, principal occupation and all offices and positions held during the past five years; and any conviction of crimes other than minor traffic violations during the past ten years. If the ultimate controlling person is an individual, furnish the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

**Item 5. and Item 6.** No change.

**Item 7. Financial statements and exhibits.**

(a) No change.

(b) ~~The~~ If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial

statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited generally accepted accounting principles financial statements shall be deemed to be an appropriate form and format.

Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer who is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of such ~~insurer filed with the insurance department of the insurer's domiciliary state~~ and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. In order for personal financial statements to be in conformity with generally accepted accounting principles, the statements shall be accompanied by the independent public accountant's standard review report stating that the accountant is not aware of any material modifications that should be made to the financial statements.

(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by ~~FORM Form B~~ requested by the commissioner, Form A, or documents otherwise required by the commissioner to be filed.

**Item 8. Annual Form C required.** A Form C, Summary of Changes to Registration Statement, shall be prepared and filed with this Form B.

SIGNATURES

Signatures and certification of the form as follows:

SIGNATURE

Pursuant to the requirements of Iowa Code section 521A.4 and ~~Regulation No. 4.01 rule 191—45.5(521A)~~, the Registrant has caused this registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of Registrant)

By \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that deponent has duly executed the attached ~~application~~ annual registration statement dated \_\_\_\_\_, 20 \_\_\_\_\_, for and on behalf of \_\_\_\_\_;  
(Name of Company)

that deponent is the \_\_\_\_\_ of such company, and that deponent is authorized to  
(Title of Officer)

execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of the deponent's knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

ITEM 6. Amend **191—Chapter 45**, Form C, title, as follows:

FORM C  
SUMMARY OF CHANGES TO REGISTRATION STATEMENT

ITEM 7. Amend **191—Chapter 45**, Form D, Items 2, 4 and 5, as follows:

**Item 2. Description of the transaction.**

Furnish the following information for each transaction for which notice is being given:

(a) A statement as to whether notice is being given under Iowa Code section 521A.5(1) "b" or section 521A.5(1) "c."

(b) A statement of the nature of the transaction.

(c) A statement describing how the transaction meets the "fair and reasonable" standard under Iowa Code section 521A.5(1) "a"(1).

~~(e)~~ (d) The proposed effective date of the transaction.

**Item 4. Reinsurance.**

If the transaction is a reinsurance agreement or modification thereto, or a reinsurance pooling agreement or modification thereto, as described in Iowa Code section 521A.5(1) "c," furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement of whether an agreement will be in effect, and a statement of whether an agreement or understanding exists between the insurer and a nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction; and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modification thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than ~~25~~ 5 percent of the insurer's surplus as regards policyholders, as of the preceding 31st day of December. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

**Item 5. Management agreements, service agreements and cost-sharing agreements.**

For management and service agreements, furnish:

(a) and (b) No change.

For cost-sharing arrangements, furnish:

(a) and (b) No change.

(c) A brief description of each party's expenses or costs covered by the agreement; ~~and~~

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;

(e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(f) A statement regarding the cost allocation methods that specifies whether the proposed charges are based on cost or market. If the proposed charges are market-based, the rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable, shall be included; and

(g) A statement regarding compliance with the NAIC Accounting Practices and Procedures Manual regarding expense allocation.

ITEM 8. Adopt the following **new** Form F in 191—Chapter 45:

FORM F

ENTERPRISE RISK REPORT

Filed with the Insurance Division of the State of Iowa

By

\_\_\_\_\_

Name of Registrant/Applicant

On Behalf of/Related to the Following Insurance Companies

Name	Address

Date: \_\_\_\_\_, 20 \_\_\_\_\_

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Item 1. Enterprise risk.**

The registrant/applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in Iowa Code section 521A.1(5) provided such information is not disclosed in the insurance holding company system annual registration statement filed on behalf of the registrant/applicant or another insurer for which the registrant/applicant is the ultimate controlling person:

(a) Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

(b) Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;

(c) Any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;

(d) Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;

(e) Business plan of the insurance holding company system and summarized strategies for the next 12 months;

(f) Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in the last year;

(g) Identification of insurance holding company system capital resources and material distribution patterns;

(h) Identification of any negative movement or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(i) Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

(j) Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant/applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the registrant/applicant is not domiciled in the United States, it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant/applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

**Item 2. Obligation to report.**

If the registrant/applicant has not disclosed any information pursuant to Item 1, the registrant/applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

[Filed Emergency After Notice 1/14/15, effective 1/14/15]

[Published 2/4/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/15.